

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

AMBER N. WRIGHT,

Respondent.

Civil Action 2:12-cv-00287

Judge Algenon L. Marbley

Magistrate Judge E.A. Preston Deavers

ORDER

The Petition to Enforce Internal Revenue Service Summons (ECF No. 2) is hereby **REFERRED** to United States Magistrate Judge Elizabeth Preston Deavers to conduct a hearing, if necessary, and make a report and recommendation for disposition of the petition. 28 U.S.C. §636(b)(1)(B).

The United States Court of Appeals for the Sixth Circuit has provided:

[F]or the government to establish a prima facie case for enforcement, it must demonstrate that (1) the investigation has a legitimate purpose, (2) the information summoned is relevant to that purpose, (3) the documents sought are not already in the IRS's possession, and (4) the procedural steps required by the tax code have been followed.

United States v. Monumental Life Ins. Co., 440 F.3d 729, 733 (6th Cir. 2006). “Once the government has made this prima facie showing, the burden shifts to the party being summoned to either disprove the elements of the prima facie case or demonstrate that judicial enforcement of the summons would otherwise constitute an abuse of the court’s process.” *Id.*

In this case, the February 9, 2012 Declaration of Revenue Officer Gene Mataka establishes a *prima facie* case for enforcement of the summons because it states:

1. That the Revenue Officer is conducting an investigation into Millenium

Rebar Construction Inc. for the taxable period ending on March 31, 2011.

2. The summons sought testimony from Respondent, as well as examination books, papers, records, or other data, relevant to the investigation.
3. The information sought is not already in the possession of the Internal Revenue Service.
4. The summons was issued in accordance with the administrative steps that the Internal Revenue Code requires.

Consequently, the burden shifts to Respondent to demonstrate why enforcement of the summons would be inappropriate.

Upon the Petition, the Exhibit(s) attached thereto, and the declaration of Gene Matakoto of the Internal Revenue Service, it is **ORDERED** that Respondent, Amber N. Wright, appear before the **HONORABLE ELIZABETH PRESTON DEEVERS**, in that Judge's courtroom, in the United States Courthouse, located at 85 Marconi Boulevard, Columbus, OH 43215, on **THURSDAY, JUNE 28, 2012 at 10:00 a.m.** to show cause as to why she should not be compelled to obey the Internal Revenue Service summons served upon Respondent on November 29, 2011.

It is further **ORDERED** that a copy of this Order, together with the Petition and Exhibit(s) attached thereto, shall be served on Amber N. Wright, in accordance with Federal Rule of Civil Procedure 4, within **THIRTY (30) DAYS** of this Order. Pursuant to Rule 4.1(a), the Court hereby appoints Revenue Agent Gene Matakoto, or any other person the Internal Revenue Service designates, to complete such service. Petitioner shall file proof of service with the Court as soon as practicable.

If Respondent has any defense to present or opposition to the Petition, she shall file and serve a written response to the Petition supported by appropriate affidavits, as well as any other

motion(s), **WITHIN FOURTEEN (14) DAYS** before the show cause hearing. Petitioner may file a reply memorandum **WITHIN FIVE (5)** days thereafter. The Court will consider only those issues raised by motion or brought into controversy by the responsive pleadings. Any uncontested allegation(s) in the petition shall be considered admitted.

If Respondent has no objection to enforcement of the summons, she is **DIRECTED** to file a Notice with the Court.

Respondent is cautioned that failure to comply with this Order may result in sanctions for contempt of Court.

IT IS SO ORDERED.

s/Algenon L. Marbley

ALGENON L. MARBLEY

UNITED STATES DISTRICT COURT

DATED: April 27, 2012